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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
NAOHISA HIGASHIYAMA, ET AL. : EXAMINER: DUONG, THO V
SERIAL NO: 10/563,151 :
FILED: JANUARY 4, 2006 : GROUP ART UNIT: 3744
FOR: EVAPORATOR :

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement stated in the Official Action dated April 6, 2009, Applicants provisionally elect Species A, as shown in Figure 3, and identify Claims 1-5, 7-9, 12, 15-22, 35 and 36 as readable on the elected species.

Applicants respectfully traverse the outstanding election requirement for the following reasons.

The outstanding Office Action simply states that “[t]he species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species” and that “these species are not obvious variants of each other based on the current record.” It is respectfully submitted that without further information, the aforementioned findings are believed to lack grounds upon which it can be evaluated whether in fact the required distinctness and reasons for insisting on election are established. Accordingly, it is respectfully submitted that the PTO has not carried its burden of proof to establish distinctness.

Furthermore, MPEP §803 states the following:

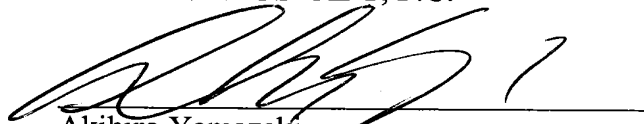
If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though it includes claims to independent or distinct inventions.

In the present application, Claims 1-34 are directed to evaporators, Claim 35 is directed to a refrigeration cycle including an evaporator, and Claim 36 is directed to a vehicle having a refrigeration cycle including an evaporator. Furthermore, in the Office Action, Claim 1 is acknowledged as generic. Thus, it appears that these claims according to the present invention are part of an overlapping search area and that a search for Claims 1-34 would necessarily include a search directed to Claims 35 and 36 as well. It is therefore believed that there is no undue burden on the Examiner to search all the claims under MPEP §803, and Applicants respectfully traverse the Election of Species Requirement on the grounds that a search and examination of the all the claims would not place a *serious* burden on the Examiner.

Accordingly, it is respectfully requested that the requirement to elect a single disclosed "species" be withdrawn, and that a full examination on the merits of Claims 1-36 be conducted.

Respectfully submitted,

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